IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 155 OF 2007.

The State of Maharashtra & another. ... Petitioners.
Versus.
M/s.Mahendra Investment Shyndicate. ... Respondent.

Shri V.S.Gokhale, A.G.P. for the Petitioners.

Shri A.S.Khandeparkar i/by M/s.Khandeparkar & Associates for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 26th April, 2007.

P.C.:

1. Heard the learned Assistant Government Pleader for the Petitioners. The 1st Petitioner is the State of Maharashtra and the 2nd Petitioner is the Medical Officer in-charge of the Diagnostic Centre of the Employees State Insurance Scheme. The Petitioners are the tenants of Unit No.9 on the 2nd floor and Unit Nos.15, 16 and 17 on the 3rd floor of the property known as Mahendra Industrial Estate at Sion, Mumbai of which the Respondent is the owner and landlord. A suit for eviction was filed by the Respondent against the Petitioners on various grounds. The first ground is the default and the second ground is the bonafide requirement. The trial Court decreed the suit on both the grounds and the decree has been confirmed by the Appellate Court.

2. The submission of the learned A.G.P. is that there is no default committed by the Petitioners. The second submission is that there could not have been a decree on the ground of bonafide requirement as the requirement pleaded by the Respondent was of the son of one of the partners of the Respondent-firm. He submitted that the requirement of a son of a partner of a partnership firm cannot be a ground for passing a decree of eviction under section 13(1)(g) of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1949.

3. I have considered the submissions. It is not in dispute that a notice of demand was issued by the Respondent to the Petitioners demanding rent and permitted increases for a period exceeding six months. There is no dispute about the service of notice of demand. There is also no dispute that within the statutory period after receipt of the said notice, the amount as demanded was not paid. It is also not in dispute that an application for fixation of standard rent was not filed within the time provided by the statute. Therefore, the Courts below were justified in passing the decree for possession on the ground of default.

4. A finding of fact has been recorded by both the

Courts below that one Vasantrai G.Pandhi in his capacity as the Manager and Karta of H.U.F. is a partner of the Respondent. The requirement of his son Mahendra to carry on business of shares and for the purpose of installation of computer terminal has been established. The submission of the Petitioners is that there could not have been a decree on the ground of bonafide requirement of the son of a partner. It must be noted here that the said Vasantrai Pandhi is not a partner in his individual capacity but he is a partner as the karta of his Hindu Undivided Family of which his son Mahendra is a member. Thus, the members of the Hindu Undivided Family are entitled to the benefit of the assets of the partnership. Therefore, it is difficult to find fault with the concurrent findings recorded on the ground of bonafide requirement. As far as hardship is concerned, both the Courts have considered the evidence on record. The view taken by the Courts is that the State Government can always acquire another premises for running the diagnostic centre. The findings of the Courts below on the issue of comparative hardship are based on the appreciation of evidence on record. There is no perversity in the said findings. Therefore, there is no merit in the Petition and the same is rejected.

5. At this stage, the learned A.G.P. seeks time to vacate on the ground that some arrangement will have to

be made for shifting the diagnostic centre. The learned Counsel for the Respondent submitted that the suit premises are not being used as a diagnostic centre by the Petitioners. However, considering the facts and circumstances of the case, time deserves to be granted to the Petitioners till 31st January 2008 to vacate the suit premises. It is needless to state that till 31st January 2008, the Petitioners will continue to pay the monthly rent and permitted increased. If the Petitioners are in arrears of rent and permitted increases, they will deposit the same with the trial Court within a period of eight weeks from today.

Judge.